UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,433	09/17/2004	Mark Merkow	03292.102050.	5432

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EXAMINER
FEARER, MARK D

ART UNIT	PAPER NUMBER
2443	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/711,433	MERKOW ET AL.
	Examiner	**Art Unit**	
	MARK D. FEARER	2443	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>28 September 2009</u>.
2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.
3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>1- 2, 9-13 and 15-25</u> is/are pending in the application.
      4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5)☐ Claim(s) _____ is/are allowed.
6)☒ Claim(s) <u>1, 9-10, 13, 16-17, and 22</u> is/are rejected.
7)☒ Claim(s) <u>2,11,12,15,18-21 and 23-25</u> is/are objected to.
8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.
10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.
      Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
      Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
      a)☐ All   b)☐ Some * c)☐ None of:
         1.☐ Certified copies of the priority documents have been received.
         2.☐ Certified copies of the priority documents have been received in Application No. _____.
         3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
      * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO/SB/08)
      Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
      Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application
6)☐ Other: _____.

DETAILED ACTION

1. Applicant's Request for Continued Examination filed 28 September 2009 is acknowledged.

2. Applicant's Amendment filed 27 August 2009 is acknowledged.

3. Claims 1, 16-18, 20 and 23 have been amended.

4. Claims 1- 2, 9-13 and 15-25 are pending in the present application.

Continued Examination Under 37 CFR 1.114

5.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114.

Allowable Subject Matter

6.   Claims 2, 11-12, 15, 18-21 and 23-25 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Rejections - 35 USC § 103

7.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed
> or described as set forth in section 102 of this title, if the differences between the
> subject matter sought to be patented and the prior art are such that the subject
> matter as a whole would have been obvious at the time the invention was made
> to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was
> made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1.   Determining the scope and contents of the prior art.
2.   Ascertaining the differences between the prior art and the claims at issue.
3.   Resolving the level of ordinary skill in the pertinent art.
4.   Considering objective evidence present in the application indicating
       obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of
the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of
the various claims was commonly owned at the time any inventions covered therein
were made absent any evidence to the contrary. Applicant is advised of the obligation
under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was
not commonly owned at the time a later invention was made in order for the examiner to
consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g)
prior art under 35 U.S.C. 103(a).

8.   Claims 1, 9-10, 13, 16-17, and 22 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Gullotta et al. (US 6985955 B2) in view of Muhlestein et al. (US

20030195942 A1) and in further view of Steegmans (US 6799216 B2).

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Consider claims 1 and 16. Gullotta et al. discloses a computer implemented method for dynamically provisioning computing resources, said method comprising: receiving a request for a computing resource, wherein said request is associated with an asset; determining an asset classification of said asset, a business value of said asset, and a resource classification related to said asset (column 7 lines 45-52), wherein said asset classification is at least one of: a public asset, a business confidential asset, a private asset, and a secret asset, wherein said business value of said asset is one of: a low value, a medium value, and a high value (column 18 lines 19-32), and wherein said resource classification is one of: a trusted classification for internal entities and a non-trusted classification for external entities (column 14 lines 3-18); and provisioning said computing resource based on said determining step (column 5 lines 13-35, column 18 lines 34-46, column 11 lines 24-52, and column 12 lines 34-53).

However, Gullotta et al. does not explicitly teach a computer implemented method for dynamically provisioning computing resources wherein an asset is assigned to one of a plurality of security domains based on a determining step, wherein each security domain corresponds to a respective degree of security control; and provisioning a computing resource based on said one of said plurality of security domains.

Muhlestein et al. discloses a method and apparatus for encapsulating a virtual filer on a filer wherein each vfiler is assigned to a distinct domain (("Specifically, each vfiler is allocated a certain amount, i.e., a subset, of dedicated and distinct units of

storage resources, and one or more dedicated and distinct network addresses. Each

vfiler is also allowed shared access to the common file system on behalf of its client.

Therefore, interpretations of a security object associated with, e.g., a client accessing

the common file system may vary among vfilers. To address this, each vfiler is provided

a vfiler context data structure (hereinafter "vfiler context") including, among other things,

information pertaining to a unique and distinct security domain of the vfiler to thereby

enable controlled access to allocated and shared resources of the vfiler. For example,

the vfiler context of a first vfiler ensures that users or clients of a first security domain

can use a first set of source and destination network addresses when issuing requests

to access a first subset of storage resources on the filer. Similarly, the vfiler context of a

second vfiler ensures that clients of a second security domain may use a second set of

source and destination network addresses to access a second subset of storage

resources. Notably, the clients of each security domain are unaware of each other's

"presence" on the filer and, further, are unable to access each other's storage

resources. In sum, no data flow exists between vfilers.") paragraphs 0058-0059).

Gullotta et al. discloses a prior art computer implemented method for dynamically

provisioning computing resources, said method comprising: receiving a request for a

computing resource, wherein said request is associated with an asset; determining an

asset classification of said asset, a business value of said asset, and a resource

classification related to said asset, wherein said asset classification is at least one of: a

public asset, a business confidential asset, a private asset, and a secret asset, wherein

said business value of said asset is one of: a low value, a medium value, and a high

value, and wherein said resource classification is one of: a trusted classification for internal entities and a non-trusted classification for external entities; and provisioning said computing resource based on said determining step upon which the claimed invention can be seen as an improvement.

Muhlestein et al. teaches a prior art comparable method and apparatus for encapsulating a virtual filer on a filer wherein each vfiler is assigned to a distinct domain.

Thus, the manner of enhancing a particular device (method and apparatus for encapsulating a virtual filer on a filer wherein each vfiler is assigned to a distinct domain) was made part of the ordinary capabilities of one skilled in the art based upon the teaching of such improvement in Muhlestein et al. Accordingly, one of ordinary skill in the art would have been capable of applying this known "improvement" technique in the same manner to the prior art computer implemented method for dynamically provisioning computing resources, said method comprising: receiving a request for a computing resource, wherein said request is associated with an asset; determining an asset classification of said asset, a business value of said asset, and a resource classification related to said asset, wherein said asset classification is at least one of: a public asset, a business confidential asset, a private asset, and a secret asset, wherein said business value of said asset is one of: a low value, a medium value, and a high value, and wherein said resource classification is one of: a trusted classification for internal entities and a non-trusted classification for external entities; and provisioning said computing resource based on said determining step of Gullotta et al. and the

results would have been predictable to one of ordinary skill in the art, namely, one

skilled in the art would have readily recognized a system and method of virtual

provisioning.

However, Gullotta et al., as modified by Muhlestein et al., does not explicitly

teach a system and method of dynamically assigning an asset to one of a plurality of

security domains based on a source of a request and determining, wherein each

security domain corresponds to a different degree of security control.

Steegmans discloses a system that uses domain managers to communicate

service parameters to domain boundary controllers for managing special internet

connections across domain boundaries comprising a method of dynamically assigning

an asset to one of a plurality of security domains based on a source of a request and

determining, wherein each security domain corresponds to a different degree of security

control.

[Steegmans, column 2, lines 39-44] It is also advantageous that the domain manager
manages all the resources required by internet connections within the domain to which
it is assigned. This permits the dynamic assignment of network resources to users, as
well as the implementation of security checks and charge metering for these resources.

[Steegmans, column 6, lines 29-34] Service quality in this sense can also constitute a
special quality of security specified by the service parameters. For this purpose the
domain boundary controllers 41 and 42 make available security functions which assure
different security levels in the domain 22 for different internet connections in accordance
with the service parameters.

Gullotta et al., as modified by Muhlestein et al., discloses a prior art computer

implemented method for dynamically provisioning computing resources, said method

comprising: receiving a request for a computing resource, wherein said request is

associated with an asset; determining an asset classification of said asset, a business value of said asset, and a resource classification related to said asset, wherein said asset classification is at least one of: a public asset, a business confidential asset, a private asset, and a secret asset, wherein said business value of said asset is one of: a low value, a medium value, and a high value, and wherein said resource classification is one of: a trusted classification for internal entities and a non-trusted classification for external entities; and provisioning said computing resource based on said determining step; and encapsulating a virtual filer on a filer wherein each vfiler is assigned to a distinct domain upon which the claimed invention can be seen as an improvement.

Steegmans teaches a prior art comparable system that uses domain managers to communicate service parameters to domain boundary controllers for managing special internet connections across domain boundaries comprising a method of dynamically assigning an asset to one of a plurality of security domains based on a source of a request and determining, wherein each security domain corresponds to a different degree of security control.

Thus, the manner of enhancing a particular device (system that uses domain managers to communicate service parameters to domain boundary controllers for managing special internet connections across domain boundaries comprising a method of dynamically assigning an asset to one of a plurality of security domains based on a source of a request and determining, wherein each security domain corresponds to a different degree of security control) was made part of the ordinary capabilities of one skilled in the art based upon the teaching of such improvement in Steegmans.

Accordingly, one of ordinary skill in the art would have been capable of applying this

known "improvement" technique in the same manner to the prior art computer

implemented method for dynamically provisioning computing resources, said method

comprising: receiving a request for a computing resource, wherein said request is

associated with an asset; determining an asset classification of said asset, a business

value of said asset, and a resource classification related to said asset, wherein said

asset classification is at least one of: a public asset, a business confidential asset, a

private asset, and a secret asset, wherein said business value of said asset is one of: a

low value, a medium value, and a high value, and wherein said resource classification is

one of: a trusted classification for internal entities and a non-trusted classification for

external entities; and provisioning said computing resource based on said determining

step; and encapsulating a virtual filer on a filer wherein each vfiler is assigned to a

distinct domain of Gullotta et al., as modified by Muhlestein et al., and the results would

have been predictable to one of ordinary skill in the art, namely, one skilled in the art

would have readily recognized a system and method of domain boundary controllers.

Consider claim 17. Gullotta et al., as modified by Muhlestein et al. and

Steegmans, discloses a system configured to facilitate dynamically dynamic

provisioning of computing resources (column 13 lines 5-18), said system comprising

including a provisioning engine configured to: receive a request for a computing

resource, wherein said request is associated with an asset, determine an asset

classification, a business value of said asset, and a resource classification related to

said asset based upon input from a manager component, wherein said asset

classification is at least one of: a public asset, a business confidential asset, a private

asset, and a secret asset, wherein said business value of said asset is one of: a low

value, a medium value, and a high value, and wherein said resource classification is

one of: a trusted classification for internal entities and a non-trusted classification for

external entities; and internal entities and a non-trusted classification for external

entities; and provision said computing resource based on said determining step (column

5 lines 13-35, column 18 lines 34-46, column 11 lines 24-52, and column 12 lines 34-

53).

Consider claim 9, as applied to claim 1. Gullotta et al., as modified by Muhlestein

et al. and Steegmans, discloses a method comprising de-provisioning said computing

resource (Gullotta et al., column 9 lines 47-54).

Consider claim 10, as applied to claim 1. Gullotta et al., as modified by

Muhlestein et al. and Steegmans, discloses a method comprising de-provisioning said

computing resource when said computing resource is no longer needed by said asset

(Gullotta et al., column 9 lines 47-54).

Consider claim 13, as applied to claim 1. Gullotta et al., as modified by

Muhlestein et al. and Steegmans, discloses a method comprising including defining

which processes may be suspended if said asset requires an additional computing

resource (Gullotta et al., column 20 lines 23-31).

Consider claim 22, as applied to claim 17. Gullotta et al., as modified by

Muhlestein et al. and Steegmans, discloses a method comprising including a

configuration manager instruction module (Gullotta et al., column 15 line 60 – column 16

line 8) configured to identify which processes may be suspended if an asset requires

additional computing resource (Gullotta et al., column 20 lines 23-31).

Response to Arguments

9.   Applicant's arguments filed 27 August 2009 with respect to claims 1 and 16-17

have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

10.   Any response to this Office Action should be faxed to (571) 273-8300 or mailed

to:

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

 Hand-delivered responses should be brought to

Customer Service Window

           Randolph Building

> 401 Dulany Street
> Alexandria, VA 22314

Any inquiry concerning this communication or earlier communications from the

Examiner should be directed to Mark Fearer whose telephone number is (571) 270-

1770. The Examiner can normally be reached on Monday-Thursday from 7:30am to

5:00pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's

supervisor, Tonia Dollinger can be reached on (571) 272-4170. The fax phone number

for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for published

applications may be obtained from either Private PAIR or Public PAIR. Status

information for unpublished applications is available through Private PAIR only. For

more information about the PAIR system, see http://pair-direct.uspto.gov. Should you

have questions on access to the Private PAIR system, contact the Electronic Business

Center (EBC) at 866-217-9197 (toll-free) or 571-272-4100.

Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist/customer service whose telephone

number is (571) 272-2600.

Mark Fearer
/M.D.F./
December 12, 2009
/George C Neurauter, Jr./
Primary Examiner, Art Unit 2443